

Appl. No. 10/678,206
Docket No. 9049
Amdt. dated March 27, 2008
Reply to Office Action mailed on November 20, 2007
Customer No. 27752

REMARKS

Claim Status

New claims 17-27 have been added and are pending, while claims 1-16 are canceled without prejudice. Support for new claims 17-27 is found at page 2, lines 9-13 and lines 19-24, page 4, lines 28-34, page 5, lines 1-12 and lines 23-28 of the specification and in Figures 5, 6, and 7. No additional claims fee is believed to be due.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejections Under 35 USC 103(a) Over U.S. Patent No. 2,480,023 to Holden

Claims 1, 4-11, 14, and 15 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 2,480,023 to Holden ("Holden"). Claims 1-16 have been cancelled without prejudice and claims 17-27 have been added. The following remarks therefore pertain to pending claims 17-27. The Examiner asserts that Holden discloses a hair treatment applicator (figs. 1-3) comprising a handle (10 via member 12) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (28) connected to the handle, each of the plurality of retaining structures having a base (at 26) and a plurality of tines (30) and is capable of holding hair treatment, wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base (see fig. 1); wherein each of the retaining structures being separated from each other by a separation volume (space between the two retaining structures).

Applicants respectfully traverse the present rejection based on the following comments. Specifically, the Office has failed to establish a prima facie case of obviousness based on Holden because Holden does not teach or suggest all of the Applicants' claim limitations.

Holden does not teach or suggest all of Applicants' claim limitations and, therefore, does not establish a prima facie case of obviousness. New claim 17 is directed to a hair treatment applicator for applying a hair treatment to hair. The hair treatment applicator comprises a handle and a head connected to the handle. The head of the hair treatment applicator comprises a first retaining structure comprising a first base, a first plurality of tines extending from said first base, and a first baffle extending from said first base, a second retaining structure comprising a second base, a second plurality of tines extending from said second base, and a second baffle extending from said second base, and a passage extending between said first and second baffle. The disclosure of Holden, however, fails to disclose a hair treatment applicator having baffles.

Holden is directed to a massage brush for use with a bath spray or with a liquid applicator for dispensing hair tonic. The Holden massage brush does not comprise baffles. The base of the massage brush has holes interspersed between nubs of substantially cylindrical shape that extend from the base. Water or hair tonic is dispensed through the holes in the base of the massage brush. The nubs of the massage brush are configured to maximize massage benefits and to facilitate *uniform application* of hair tonic to the hair.

The applicator of the present invention is required to have baffles, which bound a passage extending between the baffles. The passage extending between the baffles is substantially free of hair treatment and is configured to receive a strand of hair without exposing the strand of hair to hair treatment contained in a first and second retaining structure of the applicator. Of note, the baffles of the applicator of the present invention facilitate *non-uniform* application of hair treatment. As mentioned above, the Holden device, is configured to apply hair tonic uniformly, to “work in between hair strands and insure thorough cleansing” of the hair (Holden, column 2, lines 14-25 and lines 35-45). Such a construction would make it difficult if not impossible to selectively apply hair treatment to certain hair strands, i.e., provide for separation between treated and untreated hair.

Appl. No. 10/678,206
Docket No. 9049
Amdt. dated March 27, 2008
Reply to Office Action mailed on November 20, 2007
Customer No. 27752

Holden thus fails to disclose a hair treatment applicator having a head comprising retaining structures that comprise baffles, which bound a passage extending between the baffles. The Holden patent fails to teach or suggest all of the claim limitations of claim 17 and, therefore, it does not establish a prima facie case of obviousness. With respect to claims 18-26, an argument analogous to that made with respect to claim 17 can be made because claims 18-26 depend directly or indirectly from claim 17. With respect to claim 27, this claim recites a combination of hair treatment and a hair treatment applicator, the applicator having a head that comprises retaining structures, which comprise baffles. Thus, the above arguments relating to claim 17 also relate to claim 27. Consequently, Applicants' claims 17-27 are patentable over Holden.

Rejections Under 35 USC 103(a) Over WO 00/69308

Claims 1, 12, and 13 are rejected under 35 USC 103(a) as being unpatentable in view of WO 00/69308 (the '308 application). Claim 16 also appears to be rejected over the '308 application. Claims 1-16 have been cancelled without prejudice and claim 17-27 have been added. The following remarks therefore pertain to pending claims 17-27. The Office asserts that the '308 application discloses a hair treatment applicator (figs. 3 and 4) comprising a handle (1) having a longitudinal axis and being in an elongated form; a plurality of retaining structures or heads (at 5) connected to the handle, each of the plurality of retaining structures having a base (4) and a plurality of tines (5) and being configured for holding hair treatment; wherein the base facing in a direction substantially parallel to that of each other retaining structures and each of said plurality of tines extends substantially perpendicular from the base; wherein each of the retaining structure being separated from each other by a separation volume (10) and wherein the hair treatment is contained in each of the plurality of retaining structures and is not contained in the separation volume. The Office further asserts that the '308 application discloses retaining structures having at least one baffle (10) extending from the base.

Appl. No. 10/678,206
Docket No. 9049
Amdt. dated March 27, 2008
Reply to Office Action mailed on November 20, 2007
Customer No. 27752

Applicants respectfully traverse the present rejection based on the following comments. Specifically, the '308 application does not disclose each and every element of Applicants' claimed hair treatment applicator and, thus, does not establish a prima facie case of obviousness.

Each of claims 17-27 requires a first retaining structure comprising a first baffle, a second retaining structure comprising a second baffle, and a passage extending between the first and second baffles, the passage being substantially free of hair treatment and configured to receive a strand of hair without exposing the strand of hair to hair treatment contained in the first and second retaining structures. The Office asserts that the '308 application discloses retaining structures having at least one baffle (10) and separated from each other by a separation volume (10). The '308 application, however, cannot be interpreted such that a single element of the '308 device, namely the guiding prong, corresponds to two, very distinct elements of the claimed applicator, a baffle and a passage (separation volume).

The '308 application teaches guiding prongs (10). These guiding prongs, however, do not bound a passage that is configured to receive a strand of hair without exposing the strand of hair to hair treatment contained in adjacent (first and second) retaining structures. On the contrary, the guiding prongs of the '308 application bound and contain a volume of hair treatment, released through outlets located between each and every pair of prongs. The volumes between the prongs of the '308 application are not substantially free of hair treatment, as required by the claimed invention.

Thus, as it fails to disclose each and every element of claim 17, the '308 application does not establish a prima facie case of obviousness. With respect to claims 18-26, an argument analogous to that made with respect to claim 17 can be made because claims 18-26 depend directly or indirectly from claim 17. With respect to claim 27, this claim recites a combination of hair treatment and a hair treatment applicator, the applicator having a head that comprises a first retaining structure comprising a first baffle, a second retaining structure comprising a second baffle, and a passage extending between the first and second baffle, the

Appl. No. 10/678,206
Docket No. 9049
Amdt. dated March 27, 2008
Reply to Office Action mailed on November 20, 2007
Customer No. 27752

passage being substantially free of hair treatment and configured to receive a strand of hair without exposing the strand of hair to hair treatment contained in the first and second retaining structures. Thus, the above arguments relating to claim 17 also relate to claim 27. Consequently, Applicants' claims 17-27 are patentable over the '308 application.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the new claims presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By Melissa Krasovec

Signature

Melissa G. Krasovec

Typed or Printed Name

Registration No. 59,174

(513) 626-4055

Date: March 27, 2008
Customer No. 27752